SINGAPORE REPORTS

V.L. ITTIACHEN v. HO NAH KANG

[O.C.J. (Chua J.) May 26, 1983]
[Singapore – Civil Suit No. 736 of 1980]

Contract – Breach of – Claim for damages suffered by plaintiff caused by defendant wrongfully entering into and causing damage to and interfering with plaintiff's enjoyment of quiet possession of premises – Award of $15,000 as general damages.

Damages – Wrongfully entering into and causing damage to and interfering with plaintiff's enjoyment of quiet possession of premises.

By an agreement dated February 24, 1979 the plaintiff agreed to sell to the defendant the premises at No. 2 Kee Sun Avenue. The defendant purchased the said premises intending to demolish the old bungalow and to construct 4 new semi-detached bungalows on the said property. The said property was sold with vacant possession and the plaintiff was to vacate the said property as soon as the semi-detached bungalow marked Plot D in the plan had been completed. In compliance with the provision of the agreement, the defendant offered to sell Plot D to the plaintiff. The plaintiff did not accept the offer which expired on December 31, 1979. The plaintiff was required to quit and deliver up vacant possession of the bungalow by June 30, 1980, and on delivery of possession the defendant would pay the plaintiff $10,000 as agreed.

On December 20, 1979 the plaintiff and his family went to India. On their return on January 21, 1980, they found the gate to the bungalow removed, the front steps demolished and the main door of the house sealed with planks. The basement of the bungalow was partly occupied by workers and construction materials. The plaintiff found the bedrooms full of dust and had to sleep in the bedroom at the rear portion.

The plaintiff obtained an injunction on March 11, 1980, restraining the defendant from entering into the bungalow. On March 28, 1980, the said injunction was allowed to continue until the hearing of the action.

Held: the defendant in breach of the agreement that the plaintiff was to enjoy possession of the bungalow had by himself, his servants, workmen and agents wrongfully entered and caused damage to the bungalow depriving the plaintiff of undisturbed possession of the bungalow. The plaintiff was awarded $15,000 ($2,500 p.m. the rent which the plaintiff would have to pay to rent another bungalow) as general damages. He was also awarded $700 ($100 x 7 months) for additional Public Utilities Bill charges.

CIVIL SUIT.

G. Raman for the plaintiff.
R. Joethy for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case claims damages for breach of contract suffered by the plaintiff by the defendant, his servants, workmen and agents wrongfully entering into and causing damage to and interfering with the plaintiff's enjoyment of quiet possession of the premises known as No. 2, Kee Sun Avenue, Singapore.

The facts are these. By an agreement dated February 24, 1979, (the said Agreement) the plaintiff agreed to sell to the defendant the land and premises No. 2, Kee Sun Avenue, (the said property) for $250,000. The said property consisted of an old bungalow, (the bungalow) in which the plaintiff lived with his family, standing on 14,770 square feet of land.

The purpose of the defendant in purchasing the said property was to demolish the bungalow and to construct four new semi-detached bungalows on the said property.

The sale and purchase was subject to the defendant being able to obtain planning approval to demolish the bungalow and to construct thereon four units of semi-detached bungalows (Special Condition 2).

The said property was sold with vacant possession and the plaintiff was to vacate the said property as soon as the semi-detached bungalow marked Plot D in the plan had been completed (Special Condition 5). Completion was to take place within one month from the date the planning approval was granted (Special Condition 6).

Special Condition 7 provided that the plaintiff shall purchase and the defendant shall sell one unit of the semi-detached bungalow known as Plot D in the plan, at the price and on similar terms and conditions which the defendant sold the semi-detached bungalow known as Plot C in the plan.

Special Condition 7 was subsequently varied by the parties and set out in the defendant's solicitor's letter of July 4, 1979, (AB 24) as follows:–

"As regard Special Condition 7 of the Agreement for Sale and Purchase our instructions are that it has been agreed between our respective clients that as soon as our client has sold Plot "C" as shown in the plan annexed to the aforementioned Agreement our client will offer to sell Plot "D" as shown in the said plan to your client at the same price and on the same terms and conditions as stated in the Agreement for Sale and Purchase made between our

client and the Purchaser of Plot "C". Our client's said offer must be accepted by your client within ONE (1) MONTH from the date of our client's said offer (and in this regard time is of the essence) failing which your client will be deemed to be not interested in our client's said offer. Accordingly the said offer will lapse and our client will be entitled thereafter to dispose of the said Plot "D" in such manner as our client deems fit.

In the event of your client not purchasing the said plot "D" our client will automatically be entitled to acquire your client's right under the said Special Condition 7 aforementioned for the sum of $10,000.00. The said sum is to be paid to your client when your client quits and delivers up vacant possession of the above premises to our client. It has been agreed between our respective clients that your client will quit and deliver up vacant possession of the above premises to our client within SIX (6) MONTHS from the date of expiry of our client's offer as mentioned in paragraph 2 above (and in this regard time is of the essence)."

The plaintiff's solicitors replied on the July 9, 1979, confirming the Agreement except that in the event that the defendant was unable to find a purchaser for Plot C then the purchase price was to be fixed by valuation by an independent valuer at the defendant's expense (AB 26).

The said property was conveyed to the defendant in the middle of July, 1979.

The offer to sell Plot D to the plaintiff was made by the defendant by his solicitor's letter dated the November 30, 1979 (AB 44). The plaintiff did not accept the offer which expired on December 31, 1979.

On January 2, 1980 the defendant's solicitors wrote to the plaintiff's solicitors (AB 47) stating that since the plaintiff had failed to accept the offer, the plaintiff was required to quit and deliver up vacant possession of the bungalow, by the latest, June 30, 1980 in accordance with the agreement of the July 4, 1979.

The plaintiff's evidence as regards the alleged trespass and damage is this. One evening early in December, 1979 the defendant brought a contractor to his house. They had a discussion about the construction of the semi-detached bungalows. The defendant and the contractor knew that he and his family would be living in the old bungalow when construction of the semi-detached bungalows was going on. He told the contractor that his eldest son was retarded and that he had another young child and that he needed protection for his children whilst construction of the semi-detached bungalows was going on. The contractor said he would put up a plank wall-like partition in front of the driveway completely obstructing the view of the construction site and that would also prevent the plaintiff's children going into the construction site.

He left for India on the December 20, 1979 with his wife and children after locking up the bungalow. When he left Singapore no work had been done on the construction site except that about 3 or 4 holes had been dug in the ground for soil testing. The fence facing the Marine Parade side had been demolished and planks had been placed so that lorries could enter the construction site.

He returned from India with his wife and two children on January 21, 1980. When he arrived at the bungalow he found that one of the pillars of the gate had been demolished and the iron gate had been removed. The car could not enter the driveway as there was sand heaped at the entrance of the gate. The front steps to the bungalow had been demolished. The ground in front and by the side of the bungalow close to the walls had been dug up. The main door of the house had been sealed up with planks. An opening had been made in the front wall leading to the basement. All the glass panes of the doors and windows in the front of the bungalow had been broken and the doors and windows had been sealed with planks. He went to the rear of the house and found the kitchen door sealed up with planks. He had to remove the planks to enter into the kitchen. He went to the basement from the kitchen. He found a partition had been erected right in the middle of the basement. He looked over the partition and he found that the other side of the basement was occupied by some workers and there were construction materials stored there. He then went to the ground floor of the bungalow. He saw broken pieces of glass and cement dust on the floor and other building materials thrown on the floor. He found the bedrooms full of dust. That night they slept in the bedroom at the rear portion.

He was unsuccessful in contacting the defendant until January 25, 1980 when he met the defendant by chance. He told the defendant the condition of the bungalow. The defendant said he would come to the bungalow when he was free.

The defendant did not turn up and four or five days later he met the defendant at lunch time. The defendant again promised to visit the bungalow. The defendant, however, did not come. He

contacted the defendant by telephone and on each occasion the defendant gave a lame excuse.

Seeing that the defendant would not turn up and that the workmen were still occupying the basement he went to see his solicitors. Correspondence passed between their solicitors. The workers continued to reside in the basement.

On March 11, 1980 he commenced the present proceedings.

The defendant's evidence is this. Planning approval was obtained in August, 1979. Tenders were called and a contractor, New Continent Realty Pte. Ltd., was accepted.

On October 21, 1979 he and Siek Shing Min, (a director of New Continent Realty Pte. Ltd.) went to see the plaintiff. Siek Shing Min asked the plaintiff if he could have the use of the basement as office, quarters and store. They went to the basement. Siek said that it was very big and plaintiff suggested that Siek could make use of half of it. Siek told the plaintiff that it was necessary to make an opening in the wall of the basement facing the worksite for easy access to the worksite. The plaintiff agreed.

In late November, 1979 Plot C was sold and on November 30, 1979 he offered Plot D to the plaintiff (AB 44). On December 4, 1979 the Plaintiff's solicitors acknowledged the letter and said that they were taking client's instructions. On January 2, the defendant's solicitors wrote to the plaintiff's solicitors that since the plaintiff had failed to accept the offer, the said offer was withdrawn and requesting the plaintiff to quit and deliver up possession of the said premises by the latest June 30, 1980, and on delivery of possession the defendant would pay the plaintiff the sum of $10,000 as agreed (AB 47).

On March 6, 1980 he received a letter from the plaintiff's solicitors complaining of many things which the plaintiff had earlier agreed to (AB 50). The allegations made in the letter were not true. The solicitors gave notice that unless the defendant cease all activity as itemised in the letter and restore the said premises to its original state within 48 hours of receipt of the letter the plaintiff would apply to the High Court for appropriate remedies. He immediately went that very afternoon to the plaintiff's office and saw the plaintiff. There was a row. The plaintiff was very angry and aggressive. He shouted at the defendant and accused the defendant of cheating him. The plaintiff chased the defendant out of the office.

The defendant could not comply with the plaintiff's demand as construction work was well in progress and the semi-detached bungalows had reached the roof beam level.

He consulted his solicitors and thereafter correspondence passed between their solicitors. On March 10, 1980 the defendant's solicitors wrote to the plaintiff's solicitors (AB 55) saying that the defendant was prepared to pay the plaintiff $1500 p.m. from the date of the letter to June 30, 1980 to enable the plaintiff to obtain alternative accommodation and at the same time allowing the defendant unimpeded right to continue with the construction. The defendant would also pay the plaintiff the $10,000 as previously agreed in July, 1979.

The plaintiff replied through his solicitors on March 12, 1980 (AB 56) in these terms:

> "Our client is surprised that your client would make such a derisory offer in view of the state of affairs prevailing. However, our client is prepared to consider any reasonable offer that your client would be inclined to make."

The defendant and his solicitors then made attempts to meet and discuss the matter with the plaintiff and his solicitor but the plaintiff would not meet the defendant.

On March 11, 1980 the plaintiff obtained an interim injunction restraining the defendant, his servant, workmen and agents from entering into the bungalow and "the stretch of land immediately in front of the said premises to a width of 50 ft. running the length of the said premises known as No. 2, Kee Sun Avenue, Singapore and from obstructing the plaintiff in his entry into and exit from the said land and dwelling premises."

On March 28, 1980 it was ordered that the injunction granted on March 11, 1980 was to continue until after the hearing of the action, except that the wording in the order "and the stretch of land immediately in front of the said premises to a width of 50 ft. running the length of the said premises known as No. 2 Kee Sun Avenue, Singapore" be deleted.

By the time this suit came up for hearing the plaintiff had already given up possession of the Bungalow.

The first question which I have to decide is what is the relationship between the plaintiff and the defendant as regards the bungalow No. 2 Kee Sun Avenue. It seems to me that the plaintiff had a personal privilege to stay in the bungalow. He was, however, not a bare licensee. He was a licensee with a contractual right to remain there until June 30, 1980.

The contention of the defendant is that the construction work on the land and the bungalow complained of by the plaintiff was carried out with the prior knowledge and consent of the plaintiff well before the plaintiff's departure to India on December 20, 1979.

The question for consideration is, did the plaintiff agree to the works complained of by the plaintiff?

On March 6, 1980 the plaintiff's solicitor wrote to the defendant's solicitor detailing the wrongful act of entry and damage caused by the defendant and his contractor (AB 52). In their reply on March 7, 1980 (AB 52) the defendant's solicitor did not touch on the specific allegations made by the plaintiff. What is more important is that there was no mention that the plaintiff had agreed to the use of part of the basement by the contractor. Again in his Defence the defendant said that he had no right under Special Condition 2 "to demolish the existing building", but there again was no mention of the agreement to share the basement, to the sealing off of the front door and the demolition of the front steps.

After the letter of March 7, 1980 (AB 52) there were other letters written by the defendant's solicitors and there was no reference to the plaintiff agreeing to the sharing of the basement and to the carrying out of the other works.

The plaintiff and his family were going to live in the bungalow until June 30, 1980. It is inconceivable that the plaintiff would agree to give the defendant's contractor the use of half the basement and to agree to the other works as alleged by the defendant. It would make the bungalow uninhabitable. It is unlikely that if the plaintiff had in fact agreed that the defendant would be so generous as to offer to pay the plaintiff $1500 p.m. from March 10, 1980 to June 30, 1980 to enable the plaintiff to obtain alternative accommodation and at the same time allowing the defendant unimpeded right to continue with the construction work.

I am of the view that the defendant and his contractor were not speaking the truth.

I find that the defendant in breach of the agreement that the plaintiff was to enjoy possession of the bungalow had by himself, his servants, workmen and agents wrongfully entered and caused damage to the bungalow depriving the plaintiff of undisturbed possession of the bungalow.

I pass now to consider the question of damages. It is for me to award a figure which will fairly compensate the plaintiff for the wrongful entry by the defendant and depriving the plaintiff of undisturbed possession of the bungalow until June 30, 1980. I award the sum of $15,000 ($2500 p.m. the rent which plaintiff would have to pay to rent another bungalow for six months) as general damages.

The plaintiff says that he had suffered the following special damages (as set out in Ex P 33):

(a) damage to furniture.

(b) damage to 500 wooden carvings.

(c) additional PUB charges.

(d) packing charges for household articles and effects.

(e) expenses incurred for accommodating and entertaining plaintiff's customers in hotels as a result of the state of disrepair of the premises.

(f) expenses for flights for plaintiff's wife and 2 children (one way to India).

I am of the view that the plaintiff is not entitled to recover items (a), (b), (d), (e) and (f).

No evidence was led as to item (a).

Item (b) are elephant souvenirs described by plaintiff as "wood carvings". They were imported from India in July, 1976, more than 3½ years ago. There is no evidence as to the condition of these souvenirs before the plaintiff left for India. Not a single souvenir had been given away.

As to item (d), the plaintiff had to move away and packing had to be done anyway.

As to item (e) why should the defendant pay for the business expenses of the plaintiff? They were not the defendant's guests.

As to item (f) there is no reason why the defendant should have to pay for the airfares.

As to item (C) I award the sum of $700 ($100 for seven months).

There will be judgment for the plaintiff accordingly and costs.

Claim allowed.

Solicitors: *G. Raman & Co.; Joethy & Co.*

THE "SUNGEI BULAN"
ARDEN SHIPPING LTD. v. "SUNGEI BULAN", OWNERS OF (THE CHARTERED BANK as Interveners).

[O.C.J. (Rajah J.) June 20 & August 10, 1983]

[Singapore – Motion in Admiralty in Rem No. 320 of 1983]

Arbitration – Arbitration clause remains effective when "contract is determined by ... something arising out of the contract".

Shipping – Mortgage of vessel – Vessel arrested – Charter-party cancelled – Claim by plaintiffs/mortgagees for sale of vessel – Claim resisted by defendants/owners – Arbitration clause – Whether arbitration enforceable – Test applied by court.

By an agreement dated December 17, 1982 made between the plaintiffs and the defendants, the plaintiffs agreed to buy the rebuilt vessel "Sungei Bulan", paying for it by instalments, which instalments were used by the defendants to fund works done on the vessel. In order to secure their position, the plaintiffs obtained a mortgage over the said vessel. An integral part of the said agreement was a charterparty dated November 30, 1982, made between the defendants and Spie Offshore S.A. (the charterers). The vessel was arrested on April 25, 1983.

In the events which happened the charterers gave notice to the defendants that it was cancelling the charter. The plaintiffs contended that, one way or another, the defendants were in breach of the agreement and/or the plaintiffs were entitled to treat the agreement as terminated under its express provisions. The plaintiffs also contended that an event of default had occurred under Clause 10 of the said mortgage.

On May 23, 1983 the Chartered Bank, Singapore obtained leave to intervene as debenture holders of the "Sungei Bulan".

The plaintiffs claimed the sum of US$6.8 million together with interest against the vessel and sought for an order for the appraisement and sale of the vessel. The defendants sought for a stay of proceedings on the ground that the dispute herein should be referred to arbitration.

Held: the test in such cases has been said to be whether the contract is determined by something outside itself, in which case the arbitration is determined with it, or be something arising out of the contract, in which case arbitration clause remains effective and can be enforced. The present action should therefore be stayed for a month during which the defendants were to commence arbitration proceedings in London.

[*Editorial Note:* The plaintiffs' appeal to the Court of Appeal (Civil Appeal No. 32 of 1983, Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ., September 23, 1983) was dismissed.]

MOTION IN ADMIRALTY IN REM.

K.S. Lo for the plaintiff.

G. Emmanuel and Alan Thambiayah for the defendants.

Alan Thambiayah for the receivers.

Lee Mun Hooi for the interveners.

Cur. Adv. Vult.

Rajah J.: The Plaintiffs, a company organised and existing under the laws of the Republic of Liberia and having its registered office at Liberia, Monravia, commenced the action herein on April 22, 1983 claiming against the jack-up barge "Sungei Bulan" the sum of US$6.8 million together with interest as mortgagors under a registered First Preferred Mortgage dated February 24, 1983. The owners of the "Sungei Bulan" are Land and Sea Construction Services Pte. Limited, a company incorporated in Singapore and having its registered office at 17A Pandan Road, Singapore. The vessel was arrested on April 25, 1983. The affidavit of Max Mazel sworn to and filed on June 9, 1983 sets out the salient points.

By an Agreement for the Reconstruction and Sale of the "Sungei Bulan" (the Agreement) December 17, 1982 and made between the Plaintiffs and the Defendants, the Plaintiff agreed to rebuild, complete, carry out trials and deliver to the Defendants and the Plaintiffs agreed to purchase and take from the Defendants, the "Sungei Bulan" at the price, in the manner and upon the terms therein provided. In effect the Plaintiffs agreed to buy the rebuilt vessel paying for it by instalments, which instalments were used by the Defendants to fund works done on the vessel. In order to secure their position, the Plaintiffs obtained the said Mortgage over the barge. An integral part of the Agreement is a charterparty dated November 30, 1982 (the Charterparty)